Filed 11/30/16 P. v. Ledesma CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. SAVIAN LEDESMA, Defendant and Appellant.	B267036 (Los Angeles County Super. Ct. No. VA134307)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael A. Cowell, Judge. Affirmed.

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J. Kahn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria Wilson and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Savian Ledesma of one count of first degree willful, premeditated, and deliberate murder, and found true an allegation that he personally used a deadly and dangerous weapon in the commission of the offense. (Pen. Code, §§ 187, 190, 12022, subd. (b)(1).)[1] The court sentenced him to 26 years to life in prison.

Ledesma contends: (1) the evidence is insufficient to support the jury's finding of premeditation; (2) the court erred by failing to instruct the jury that it could consider defendant's voluntary intoxication in determining whether he premeditated the charged murder; and (3) the court prejudicially erred by instructing the jury as to voluntary manslaughter. We reject these contentions and affirm the judgment.

STATEMENT OF FACTS

A. *Prosecution Case*

In March 2014, Oracio Trejo was living in an apartment with his mother, Juana Gonzalez, and his girlfriend, Shantay Carter. Ledesma lived in an apartment in an adjacent building. The front doors to the two apartments were about five feet apart, and faced each across an exterior walkway. Trejo and Ledesma were friends, and Trejo called Ledesma by the nickname, "Filero." Neither Carter nor Gonzalez had ever seen Trejo and Ledesma fight.

On the evening of Saturday, March 8, 2014, Trejo and Carter went out to dinner. Before they left, Carter saw Ledesma in an alley behind the apartments, running, sweating, and acting in a way that she had never seen before. According to Carter, Ledesma's "eyes appeared popped out," and she believed he was "high on crystal meth." When she and Trejo returned from dinner

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[1] Statutory references are to the Penal Code.

about 10:30 that night, Carter saw Ledesma standing behind a see-through security door, "glaring" at them.

At around 3:30 a.m. the next morning, Trejo and Carter were awakened when something hit and broke the window next to their bed. The window is directly across the walkway from Ledesma's apartment. Trejo stepped out onto the walkway for about five seconds, then came back inside and closed the door. At that point, Gonzalez (Trejo's mother) came out from her bedroom and asked about the noise. After a brief conversation, Trejo opened the front door again.

As Trejo stood in the open doorway, Carter heard Ledesma's apartment door open. (From her vantage point, Carter could not see outside the front door.) Gonzalez was standing behind Trejo, about one or two feet away. Trejo said, "Hey, fool, you heard that?" Gonzalez saw Ledesma come out of his apartment and lunge at Trejo's neck and chest with a quick stabbing motion. Ledesma stabbed Trejo three times. Trejo jumped back from the doorway. He told Carter, "[I]t was Filero," and to call 911.

According to Carter, only a few seconds elapsed between the time Trejo opened the door to the time he jumped back from the doorway. During that time, Carter did not hear any sign of a physical or verbal altercation. Gonzalez said Trejo did not step toward Ledesma, try to kick Ledesma, or hold his fists in a fighting position.

Two of Trejo's wounds—a two and one-quarter inch cut on the left side of his neck and a five and one-half inch cut to the left side of his chest—were fatal. A smaller, third wound to the right side of his chest was not serious enough to be fatal.

A nine-inch stainless steel knife with a four and one-half inch blade was found spattered with Trejo's blood in a grassy area a few doors away from Trejo's apartment. The knife was part of a set

of kitchen knives found in Ledesma's apartment. Ledesma's blood, but not Trejo's, was found on another knife in Ledesma's apartment. Ledesma's blood was also found on the doorknob to his apartment and in the kitchen area of his apartment.

The object that hit Trejo's window was a lamp that Trejo loaned to Ledesma several months before the incident.

On Thursday, March 13, Ledesma turned himself in to police. His hands and wrists had small cuts and abrasions that may have occurred on the night of the incident.

B. *Defense Case*

Ledesma testified in his defense as follows. He and Trejo became friends in November 2013. Trejo introduced him to methamphetamine, and they used the drug together every weekend. They never argued, and Ledesma had no reason to harm or kill Trejo.

On Friday, March 7, 2014, Ledesma and Trejo purchased about two grams of methamphetamine, then smoked the drug at Ledesma's apartment throughout the night. Ledesma did not sleep that night.

The next day, Ledesma and Trejo continued to use the drug throughout the day. Trejo would leave periodically, and then return. At around 6:30 p.m. on Saturday, March 8, Ledesma felt dehydrated and shaky. At around 7:00 p.m., Trejo came back with a "new kind" of methamphetamine, which Ledesma then smoked. Between the time they began using the drug on Friday night until this point on Saturday, Ledesma had smoked about two grams of methamphetamine. At around "late 7:00" p.m., after Trejo left, Ledesma went outside to get some fresh air. He then started "seeing stuff," like "spirits and demons."

The next thing Ledesma could remember was waking up at 7:00 a.m. the next morning in a river bed "two cities away" from his

apartment. He walked to his sister's house, about 20 or 30 blocks away. That afternoon, his sister told him Trejo had been stabbed. Ledesma stayed at his sister's house until Thursday, March 13, when he turned himself in to police.

Ledesma could not recall getting into an argument or fight with Trejo that night, or Trejo doing anything to provoke him. He said he "blacked out" and remembered nothing about the incident.

The defense presented an expert witness, Ettie Rosenberg, a pharmacist and attorney, who testified about the possible effects of prolonged drug use and of combining different drugs. She reviewed lab results for Trejo, police reports, witness statements, and Trejo's autopsy report, which showed methamphetamine and MDMA in his blood. MDMA is a psychedelic that affects the user's ability to understand what is going on in real life. Rosenberg testified that someone who did two grams of methamphetamine over a 48-hour period would have severely impacted judgment and decision-making skills, with a rise in paranoia and, potentially, psychosis. The combination of methamphetamine and MDMA could cause a user to "black out" or be unable to recall things in a manner consistent with Ledesma's description of the events.

DISCUSSION

A. *Sufficiency Of The Evidence Of Premeditation*

Ledesma was convicted of willful, deliberate, and premeditated murder of Trejo. He contends that the evidence is insufficient to support the jury's finding of premeditation and we should, therefore, reduce his conviction to second degree murder. We disagree.

Murder is the unlawful killing of a human being with malice aforethought. (§ 187.) First degree murder includes murder that is willful, deliberate, and premeditated. (§ 189.) "Deliberate" means formed, arrived at, or determined upon as a result of careful

thought and weighing of considerations for and against the proposed course of action. (*People v. Houston* (2012) 54 Cal.4th 1186, 1216; *People v. Solomon* (2010) 49 Cal.4th 792, 812.) "[P]remeditation" means thought over in advance. (*People v. Pearson* (2013) 56 Cal.4th 393, 443.) A murder is thus " 'premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.' " (*Ibid.*) Such thought and reflection, however, " ' "does not require an extended period of time. 'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.' " ' " (*People v. Houston*, *supra*, 54 Cal.4th at p. 1216.)

To determine the sufficiency of evidence, we consider the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a rationale trier of fact could have found the defendant guilty beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Johnson* (1980) 26 Cal.3d 557, 577; *People v. Mendoza* (2011) 52 Cal.4th 1056, 1068-1069.)

In *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*), our Supreme Court identified three types of evidence to consider when deciding whether the evidence is sufficient to support a finding of premeditation: planning activity; motive; and the manner of killing. (*Id* at p. 26.) Planning activity is activity prior to the killing that was "directed toward, and explicable as intended to result in, the killing." (*Ibid.*) To support a finding of premeditation, such evidence must show that the "defendant considered the possibility of murder in advance" of the killing. (*People v. Young* (2005) 34 Cal.4th 1149, 1150.) Motive evidence includes facts about the defendant's relationship with the victim or his or her conduct toward

the victim that implies a motive to kill. (*Anderson*, *supra*, 70 Cal.2d at p. 27.) Evidence of the manner of killing may indicate that the killing was so particular and exacting that the defendant must have committed the murder according to a preconceived design. (*Ibid.*) *Anderson* observed that courts have upheld findings of premeditation and deliberation when all three types of evidence are present. (*Ibid.*) Even in the absence of motive or manner of killing, however, the finding has been upheld when there is "extremely strong" evidence of planning activity. (*Ibid.*)

Although the *Anderson* factors are "helpful for purposes of review," our Supreme Court has cautioned against "[u]nreflective reliance" on them. (*People v. Thomas* (1992) 2 Cal.4th 489, 517.) The factors provide a framework to help the court assess whether the evidence presented supports an inference that the killing resulted from a "preexisting reflection and weighing of considerations," but they are not an exclusive or exhaustive list of considerations. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1081.)

Here, there is strong evidence of planning activity. Someone threw a lamp at the window above Trejo's bed at 3:30 in the morning. The jurors could reasonably conclude that it was Ledesma who threw the lamp because he had borrowed the lamp from Trejo and, as subsequent events revealed, he was awake at the time. The jurors could further infer a reason that Ledesma threw the lamp at Trejo's window—to wake Trejo and draw him outside. After rousing Trejo, Ledesma went back to his apartment, across from Trejo's front door. At some point, he selected a large knife from his kitchen as a weapon—an act evidencing prior thought and reflection as to what he was about to do. When Trejo went into the hallway and asked Ledesma if he "heard that," Ledesma lunged at Trejo with the knife. There is no evidence to suggest that Trejo provoked Ledesma or did anything to cause Ledesma to act out of a rash

impulse. Viewed in their entirety, Ledesma's actions—throwing an object to awaken Trejo, returning to his apartment to await Trejo's investigation of the noise, selecting a knife, and attacking Trejo without provocation—constitute strong evidence of a preconceived plan to kill Trejo.

There is little, if any, evidence of a motive to kill. Earlier in the evening, prior to the killing, Carter (Trejo's girlfriend) saw Ledesma "glaring" at her and Trejo. The glaring may be evidence that he was upset with them or, as the defense expert suggested, that he was experiencing drug-induced paranoia. The object Ledesma chose to throw at Trejo's window was a lamp he had borrowed from Trejo, which might suggest that the lamp was the source of conflict between them. Nevertheless, Ledesma and Trejo were friends and had never previously fought, and any issue concerning the lamp is speculative. The absence of strong motive evidence, however, does not preclude a finding of premeditation if the evidence of planning is strong and the manner of killing is consistent with a preconceived plan to kill. (*Anderson*, *supra*, 70 Cal.2d at p. 29.)

The manner by which Ledesma killed Trejo consisted of stabbing Trejo three times in his chest and neck. Two of the stab wounds were fatal, and one was more than five inches deep. The knife was a large kitchen knife, not one that Ledesma could have carried around with him, such as a small pocket knife. There was no provocation that might have evoked the stabbing as a "rash impulse"; instead, Ledesma lunged at Trejo after Trejo asked merely, "Hey, fool, you heard that?" The manner of killing—an unprovoked triple stabbing to the neck and chest—thus supports the inference that Ledesma acted to fulfill a preconceived plan to kill. (See *People v. Thompson* (2010) 49 Cal.4th 79, 115 [close range

shooting of three gunshots without any provocation supports inference of premeditation and deliberation].)

Because the evidence that Ledesma designed and executed a plan to lure Trejo outside his apartment where he could kill him is strong, and the evidence of his manner of killing evinces the fulfillment of that plan; the evidence is sufficient to support the jury's finding of premeditation and deliberation.

The defense relies on *People v. Boatman* (2013) 221 Cal.App.4th 1253 (*Boatman*). In that case, the defendant and his girlfriend, Rebecca Marth, smoked marijuana and watched a movie in the defendant's home. Marth picked up a gun that the defendant had in his room and pointed it at the defendant. (*Id.* at p. 1260.) The defendant took the gun away from Marth, pointed it at her "jokingly," and cocked the hammer back. (*Id.* at pp. 1260, 1263.) When Marth tried to slap the gun away, the defendant squeezed it to keep from dropping it and " 'it went off.[']" (*Id.* at p. 1260.) A bullet hit Marth in her face, but did not kill her instantly. The defendant tried to give Marth mouth-to-mouth resuscitation and told his brother to call the police. (*Id.* at p. 1261.) He then brought Marth outside " 'to get her help.' " (*Ibid.*) In the aftermath of the shooting, he appeared "horrified and distraught" about what he had done. (*Id.* at p. 1267.)

The *Boatman* court reversed the premeditation finding and reduced the conviction to second degree murder.[2] The court found no evidence of planning activity. The defendant never left the room

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[2] The evidence was sufficient to support second degree murder, the court explained, because the jury could have easily concluded that pointing a loaded gun at someone and pulling the hammer back is an intentional act, the natural consequences of which are dangerous to human life, and that the defendant did so with knowledge of such danger and with conscious disregard for Marth's life. (*Boatman*, *supra*, 221 Cal.App.4th at p. 1263.)

to retrieve a gun, and possessed it only after taking it away from Marth. (*Boatman*, *supra*, 221 Cal.App.4th at p. 1260.) When the gun fired and Marth was struck, the defendant attempted to resuscitate Marth and sought aid for her. He stayed at the scene and cooperated with police officers. (*Id* at p. 1259.) The defendant's distraught and surprised reaction was inconsistent with a preconceived plan. (*Id.* at p. 1267.) Although there was some evidence that the defendant and Marth had argued earlier that night, this was insufficient to establish a motive to kill. Finally, although Marth was shot in the face at close range, other evidence regarding the manner of killing did not indicate a preconceived plan. After the one shot was fired, five bullets remained in the gun and Marth did not die immediately. If the defendant planned to kill her, he would have taken more lethal aim or fired additional shots. (*Id.* at p. 1269.)

Here, there is no evidence that Ledesma's stabbing was the tragic result of dangerous knife-play with his victim. To the contrary, his actions indicate that he planned to waken and draw Trejo outside where he could kill him with a large knife. Unlike the defendant in *Boatman*, who failed to fire a second shot even though his victim did not immediately die and then remained at the scene to aid her, Ledesma stabbed Trejo repeatedly in the chest and neck, then fled the scene and stayed away for more than four days. Not only did Ledesma act like someone who had just fulfilled a preconceived plan, but his flight from the scene belies his claim that he had no knowledge of what he was doing when he was doing it. *Boatman* is thus easily distinguished.

Ledesma further argues that due to his state of intoxication he was unable to premeditate and deliberate the killing of Trejo. We disagree. Evidence of intoxication is admissible to show that a defendant did not actually premeditate or deliberate killing

the victim. (§ 29.4, subd. (b); *People v. Saille* (1991) 54 Cal.3d 1103, 1112 (*Saille*).) The question whether the defendant in fact premeditated and deliberated the murder despite being intoxicated is one for the jury. (See *People v. Castillo* (1997) 16 Cal.4th 1009, 1014 (*Castillo*).) In light of the evidence discussed above, the jury could reasonably conclude that, regardless of Ledesma's intoxication, he actually premeditated and deliberated the murder of Trejo.

B. *Failure To Instruct That Jurors Could Consider Ledesma's Intoxication In Determining Premeditation And Deliberation*

The trial court instructed the jurors that if they found that Ledesma "was intoxicated at the time of the alleged crime, [they] should consider that fact in deciding whether [Ledesma] had the required specific intent."[3] (See CALJIC No. 4.21.) Ledesma contends that the court erred by failing to further instruct the jurors that they should consider intoxication evidence in deciding whether Ledesma premeditated the murder. The Attorney General contends that there was no error because Ledesma did not request the further instruction and the court had no sua sponte duty to give it. We agree with the Attorney General.

" 'A trial court has a duty to instruct the jury "sua sponte on general principles which are closely and openly connected with the

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[3] The record is not clear as to who requested this instruction. The written instruction has a checkmark in the box next to "Requested by Plaintiff," and no checkmark in the "Requested by Defendant" box. During the discussion regarding instructions between the court and counsel, the court stated: "Voluntary intoxication when relevant to specific intent. 4.21. The People are requesting that, are they not?" And then added, "I mean the defense is. I wonder if the People are as well?" The prosecutor responded, "Yes, I am." Defense counsel was silent on this subject.

facts before the court." ' " (*People v. Gutierrez* (2009) 45 Cal.4th 789, 824.) The court also has a sua sponte duty to instruct on the defendant's theory of the case, including defenses the defendant is relying on and (if there is substantial evidence to support them) defenses that are not inconsistent with the defendant's theory of the case. (*People v. Abilez* (2007) 41 Cal.4th 472, 517; *People v. Sedeno* (1974) 10 Cal.3d 703, 716.)

Courts do not, however, have a sua sponte duty to give "pinpoint" instructions. (*People v. San Nicolas* (2004) 34 Cal.4th 614, 669 (*San Nicolas*); *Saille*, *supra*, 54 Cal.3d at p. 1119.) A "pinpoint" instruction is one that relates "particular facts to a legal issue in the case or 'pinpoint[s]' the crux of a defendant's case." (*Saille*, *supra*, 54 Cal.3d at p. 1119; see also *People v. Sears* (1970) 2 Cal.3d 180, 190.) The defendant has the burden of requesting pinpoint instructions. (*San Nicolas*, *supra*, 34 Cal.4th at p. 669.)

Here, Ledesma did not request an instruction relating his intoxication to the jury's determination of premeditation and the court did not give it. The question, therefore, is whether the omitted instruction is one that the court was required to give sua sponte, or a pinpoint instruction that must be given only upon request. Our Supreme Court answered this question in *Saille*, *supra*, 54 Cal.3d 1103.

In *Saille*, the trial court instructed the jury that it could consider the defendant's voluntary intoxication in determining whether the defendant had the specific intent to kill when he murdered his victim. (*Saille*, *supra*, 54 Cal.3d at p. 1108.) The defendant did not request, and the court did not give, an instruction relating intoxication to the issues of premeditation and deliberation. On appeal, the defendant argued that the trial court had a sua sponte duty to give that instruction. (*Ibid.*) The Supreme Court disagreed. The court discussed the use of intoxication

evidence to support the former defense of diminished capacity and the abolishment of that defense by the Legislature in 1981 and by the electorate in 1982. (*Id.* at pp. 1109-1112.) In light of the abolishment of that defense, the *Saille* court explained, "it makes more sense to place on the defendant the duty to request an instruction which relates the evidence of his intoxication to an element of a crime, such as premeditation and deliberation. This is so because the defendant's evidence of intoxication can no longer be proffered as a defense to a crime but rather is proffered in an attempt to raise a doubt on an element of a crime which the prosecution must prove beyond a reasonable doubt. In such a case the defendant is attempting to relate his evidence of intoxication to an element of the crime. Accordingly, he may seek a 'pinpoint' instruction that must be requested by him [citation], but such a pinpoint instruction does not involve a 'general principle of law' as that term is used in the cases that have imposed a sua sponte duty of instruction on the trial court." (*Id.* at p. 1120.)

The Supreme Court reaffirmed *Saille* in *San Nicolas*, *supra*, 34 Cal.4th 614. In that case, the defendant argued that *Saille*'s holding was "in tension" with other Supreme Court precedent that "required a trial judge to instruct not merely on 'defenses,' but also on the defendant's theory of the case." (*Id.* at pp. 669-670.) The court rejected this argument, stating that "*Saille* clarified that the defense of voluntary intoxication was an attempt to raise a reasonable doubt as to a specific element of the crime and did not trigger a judge's sua sponte duty to instruct." (*San Nicolas*, *supra*, at p. 670; see also *Castillo*, *supra*, 16 Cal.4th at p. 1014 [under *Saille*, "[a]n instruction relating intoxication to any mental state is . . . 'now more like the "pinpoint" instructions' that 'are not required to be given sua sponte' "].)

Saille is controlling here. The omitted instruction, which would have informed the jury that it should consider Ledesma's intoxication in deciding whether he premeditated and deliberated the killing, was a pinpoint instruction that Ledesma had the burden to request and, in the absence of a request, the court had no duty to give. Here, Ledesma did not request the instruction. There was, therefore, no error in failing to give the instruction.[4]

Ledesma relies on *Castillo*, *supra*, 16 Cal.4th 1009. In that case, the trial court instructed the jurors that they should consider the defendant's voluntary intoxication in determining whether he had the specific intent or "mental state" required for first degree murder; the instruction did not explicitly relate defendant's intoxication to premeditation. (*Id.* at p. 1014.) There was no question in *Castillo* that the defendant had the burden to request a pinpoint instruction relating intoxication to premeditation. The issue in *Castillo* was whether defendant's counsel was ineffective because he failed to request the more specific pinpoint instruction. (*Id.* at p. 1012.) The Supreme Court rejected the ineffective assistance claim, holding that "competent counsel could reasonably conclude that the instructions adequately advised the jury to consider the evidence of intoxication on the question of premeditation, and that an additional instruction stating the obvious—that premeditation is a mental state—was unnecessary." (*Id.* at p. 1018.) *Castillo* has no bearing on the question presented here: Whether the court erred in failing to give a pinpoint instruction that Ledesma never requested.

Because an instruction directing the jury to consider Ledesma's voluntary intoxication in deciding whether Ledesma

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[4] Although the Attorney General argued this point in the respondent's brief and cited to *Saille*, defendant did not respond to the point or attempt to distinguish *Saille*.

premeditated the killing of Trejo was a pinpoint instruction that Ledesma was required to request, the court did not err by failing to give the instruction sua sponte.

Defendant also relies on *People v. Soto* (2016) 248 Cal.App.4th 884, review granted Oct. 12, 2016, S236164 (*Soto*). In *Soto*, the defendant relied on the theory of imperfect self-defense, and asserted that he killed his victim while intoxicated based upon an honest but unreasonable belief in the need to defend himself. He was, he argued, therefore guilty of no more than voluntary manslaughter. Regarding intoxication, the trial court instructed the jury as follows: "You may consider evidence, if any, of the defendant's voluntary intoxication only in a limited way. You may consider that evidence *only* in deciding whether the defendant acted with an intent to kill, or the defendant acted with deliberation and premeditation, or the defendant was unconscious when he acted. Voluntary intoxication can only negate express malice, not implied malice. [¶] . . . *You may not consider evidence of voluntary intoxication for any other purposes*." (*Id.* at p. 895, italics added.)

The Sixth District Court of Appeal held that this instruction was erroneous. Citing *Saille*, the court began by stating that "a trial court has no sua sponte duty to give an instruction on voluntary intoxication." (*Soto*, *supra*, 248 Cal.App.4th at p. 897.) "However," the court continued, "if a court gives such an instruction, it must do so correctly." (*Ibid.*) The instruction in *Soto* was incorrect because it informed the jurors that: (1) they could consider intoxication in deciding certain specified issues; (2) they could *not* consider evidence of intoxication for any purpose other than deciding the specified issues; and (3) the specified issues did not include the defendant's theory of imperfect self-defense. "By its terms," therefore, the "instruction precluded the jury from considering evidence of voluntary intoxication in deciding whether defendant

had an honest but unreasonable belief in the need for self-defense." (*Id.* at p. 898.)

Soto is distinguishable from our case for the same reason that the *Soto* court believed it was not bound by *Saille*—the trial court in *Soto* did not merely omit an unrequested pinpoint instruction about intoxication, but actually gave an *explicit, incorrect* instruction. Here, the court correctly instructed the jury that it could consider defendant's voluntary intoxication "in deciding whether [Ledesma] had the required specific intent," and did *not* commit the *Soto* court's error by adding that the jurors could consider defendant's intoxication for that purpose *only*, or that they must *not* consider intoxication for any other purpose. *Soto*, therefore, does not apply here.

C. *Instruction On Voluntary Manslaughter*

The court instructed the jury as to voluntary manslaughter, based on a theory of sudden quarrel or heat of passion, as a lesser offense to the charged crime of murder. Ledesma contends that the court erred in giving the voluntary manslaughter instruction because there was insufficient evidence to support the instruction. We agree. The error, however, was harmless.

Voluntary manslaughter is a lesser-included offense of murder in which the defendant kills the victim without malice. (§ 192, subd. (a); *People v. Breverman* (1998) 19 Cal.4th 142, 154.) A defendant may commit voluntary manslaughter rather than murder if he kills "upon a sudden quarrel or heat of passion." (§ 192, subd. (a).)

Although the trial court generally has an obligation to instruct the jury "on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present," it has no duty to instruct on lesser offenses that are not supported by substantial evidence. (*People v. Breverman*,

supra, 19 Cal.4th at pp. 154, 162.) Substantial evidence in this context does not mean " '*any* evidence, no matter how weak' "; it means evidence from which reasonable jurors could conclude that the defendant committed the lesser, but not the greater, offense. (*Id.* at p. 162.)

The trial court also has an affirmative duty not " 'to charge the jury on abstract principles of law not pertinent to the issues in the case.' " (*People v. Mills* (2012) 55 Cal.4th 663, 680.) According to our Supreme Court, " '[t]he reason for the rule is obvious. Such an instruction tends to confuse and mislead the jury by injecting into the case matters which the undisputed evidence shows are not involved.' " (*Ibid.*) Thus, it "is error to give an instruction which, while correctly stating a principle of law, has no application to the facts of the case." (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129 (*Guiton*).)

Here, the voluntary manslaughter instruction is not supported by substantial evidence and was therefore "not pertinent to the issues in the case." There is no evidence in the record of a quarrel between Trejo and Ledesma, sudden or otherwise. Indeed, the three witnesses most knowledgeable about the relationship between the two—Carter, Gonzales, and Ledesma—testified that Trejo and Ledesma were friends who had never argued or fought. Trejo was asleep up until he was awakened by the lamp crashing into his window, and his subsequent interaction with Ledesma consisted entirely of him asking, "Hey, fool, you heard that?" and Ledesma responding with lethal stabs to his neck and chest. There was no quarrel.

"The heat of passion requirement for manslaughter has both an objective and a subjective component." (*People v. Steele* (2002) 27 Cal.4th 1230, 1252.) The defendant must not only " 'actually, subjectively, kill under the heat of passion," but the "heat of passion

must be such a passion as would naturally be aroused in the mind of an ordinarily reasonable person under the given facts and circumstances.' " (*Ibid.*) " 'To satisfy the objective or "reasonable person" element of this form of voluntary manslaughter, the accused's heat of passion must be due to "sufficient provocation." ' " (*Id.* at p. 1253.)

Here, even if Ledesma subjectively acted under a heat of passion—perhaps induced by his drug use—there is no evidence of the requisite provocation. Even if Trejo's question—"Hey, fool, you heard that?"—was said accusingly or in a hostile manner, it would be insufficient to arouse in the mind of an ordinarily reasonable person a heat of passion that could reduce murder to voluntary manslaughter.

Because there is insufficient evidence to support findings that Ledesma killed Trejo during a sudden quarrel or a heat of passion for purposes of voluntary manslaughter, the court erred in instructing the jury on that theory.

The error is not "of federal constitutional dimension," and is therefore governed by the *Watson* test for prejudice. (*Guiton*, *supra*, 4 Cal.4th at p. 1130, citing *People v. Watson* (1956) 46 Cal.2d 818, 836.) Under this test, "reversal is required if it is reasonably probable the result would have been more favorable to the defendant had the error not occurred." (*Guiton*, *supra*, 4 Cal.4th at p. 1130; see also *People v. Rowland* (1992) 4 Cal.4th 238, 282 [error in giving instruction correct in law but irrelevant is a technical error that will not ordinarily be grounds for reversal].)

Ledesma argues that giving a voluntary manslaughter instruction was prejudicial because it "misdirected the jury to decide whether the killing was *justified*, which erroneously placed the burden on [him] to prove he had a reason to kill." We disagree. The jurors were instructed that voluntary manslaughter is a lesser

crime to the crime of murder, and that they may convict Ledesma of any lesser crime "[i]f [they] are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime of first degree murder [and they] are satisfied beyond a reasonable doubt that he is guilty of the lesser crime." They were to consider voluntary manslaughter, therefore, only if they could not reach a verdict of murder. The jurors were further instructed that whether particular instructions apply will depend upon their factual findings, and to disregard instructions that do not apply given those factual findings.[5] Reading the instructions as a whole, it is not reasonably probable that the jurors misapplied the instructions in the manner Ledesma contends. The error in giving the voluntary manslaughter instruction, therefore, was harmless.[6]

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[5] The law also presumes that jurors will disregard an instruction when the evidence does not support its application. (*People v. Frandsen* (2011) 196 Cal.App.4th 266, 278.)

[6] Ledesma argues that if multiple errors are harmless when viewed in isolation, we should reverse the judgment because of the cumulative prejudicial effect of the errors. Because we conclude that only one error occurred, this issue is not before us.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.